

by asking your attorney for names of professional counselors or therapists.

A videotape that addresses problems your family may face with divorce and custody entitled “Children First: Custody, The Courts and Your Family,” has been developed by the Pennsylvania Bar Association Young Lawyers Division. To request a copy, call 800-932-0311.

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## What Should I Do If Served With A Divorce Complaint?

A divorce action is like any other lawsuit. It begins with a complaint filed in court and served on the person against whom it is filed. If you do not respond, the divorce may proceed without you being represented or having your rights protected.

You should consult an attorney immediately upon receiving a divorce complaint. If you feel that you cannot afford an attorney, you should contact the community legal services in your county.

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## How Can I Locate An Attorney?

Call the Pennsylvania Bar Association Lawyer Referral Service toll free at 800-692-7375, or 717-238-6807. Most counties have this same service at the local level. Check your yellow pages under “attorneys” for more details.

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This pamphlet has been made available to you as a public service of the Pennsylvania Bar Association. Visit our Web site at [www.pabar.org](http://www.pabar.org) or call 800-932-0311 for a list of other pamphlets, or to order additional copies.

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# Divorce and Separation

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## Consumer Legal Information Pamphlets

*by the*

PENNSYLVANIA BAR ASSOCIATION



Grounds for divorce in Pennsylvania can be either NO-FAULT or FAULT. Before you can file for divorce in Pennsylvania, you and/or your spouse must have resided in the state for at least six months. Then you must prove that there are grounds, or lawfully acceptable reasons, for a divorce.

If a divorce is by MUTUAL CONSENT and both parties sign Affidavits of Consent to it, the matter will be ripe for the court to grant a divorce three months after the service of the complaint on the other party. If only one spouse wants a divorce and the parties have been living separate and apart for at least two years, a divorce may be granted if the court determines that the marriage is irretrievably broken. Both of these are NO-FAULT grounds for divorce.

Before someone can obtain a FAULT divorce, two things must be proven. First, that he or she is “innocent and injured,” or not at fault, and second, that misconduct by the other spouse has caused a breakdown of the marriage. Allowable grounds for FAULT divorce are specified by law, such as violence, bigamy, adultery, desertion, conviction of a crime or insanity.

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## What Is A Legal Separation?

Technically, there is no such thing in Pennsylvania as a “legal separation.” Separation simply means that you and your spouse are living separate and apart, whether under the same roof or otherwise. Separation may occur by mutual consent or by one of you leaving or being expelled from your home. Under some circumstances, you may be considered separated even though you and your spouse are still living in the same residence.

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## Can I Stop My Spouse From Entering Our Home?

Your spouse has a right to be on and in the property that you both own or rent unless a court decides otherwise. If you lock your spouse out, he or she may be able to take appropriate action to regain entry to the property.

*Special Note: This pamphlet has been issued to inform and not to advise. It is based on Pennsylvania law. The statements are general, and individual facts in a given case may alter their application or involve other laws not referred to here.*

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## What If My Spouse Has Abused Me?

If there has been actual or threatened abuse, your spouse may be ordered by the court to leave your residence and to stay away for up to 18 months. Another pamphlet offered by the Pennsylvania Bar Association, “Protection from Abuse,” deals more with this issue.

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## What Is The Role Of A Lawyer?

If you and your spouse are having marital problems, your lawyer can assist you in three areas. First, an attorney will advise you of your legal rights and duties. Second, he or she will help to bring about an agreeable settlement of the legal disputes which arise between you and your spouse as a

result of separation or divorce. Finally, your lawyer is your representative in enforcing your rights in a court of law or in defending you if your spouse files an action against you.

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## What Is A Separation And Property Settlement Agreement?

After a husband and wife separate, especially if they intend to divorce, it is desirable for them to enter into a written agreement to provide for:

- division of real estate and personal property;
- support, if any, payable to the dependent spouse and children;
- responsibility for debts and legal fees;
- health and life insurance arrangements; and
- custody and visitation of children

Also included are many other items which set forth the mutual rights and duties of the two people. This agreement is a contract, but may be enforced as though it is an order of the court. Certain provisions in the agreement concerning visitation and child support can later be modified by the court if circumstances change. Child custody is modifiable without showing changed circumstances. The agreement is written by the attorneys representing you and your spouse following negotiations.

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## What Happens To Real Estate We Own?

Most married couples own their real property as “tenants by the entireties.” This form of joint ownership means that neither spouse can sell the property during the marriage without the consent of the other. Upon divorce, however, unless the parties have a written agreement providing for the division of the property, the court has the power to divide the property based on equitable principles. This means that the court will take many factors into account when arriving at a fair division, although that does not always mean that the property will be

divided equally.

The court takes into consideration both spouses’ economic and non-economic contributions to property acquired during the marriage. If neither you and your spouse nor the court divide the property, then the nature of your ownership automatically changes after divorce and you both become “tenants in common.”

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## What Is Marital Property?

The Divorce Code provides that all property acquired by either spouse during the marriage, with certain exceptions like gifts and inherited property, is marital property, regardless of in whose name the property is held. It should be noted that the increase in value during the marriage of gifts through third parties, inherited property, and premarital property that remain in one party’s name, will also be considered marital. Marital property, if not divided in the separation agreement, may be divided equitably by the court.

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## Who Owns The Household Goods?

Household items, such as drapes, carpets, furniture and appliances and other personal effects are generally not titled in either spouse’s name. Unless you can show that the household good(s) was acquired prior to marriage, by gift from a third party, or belonged solely to you as evidenced by a valid agreement between you and your spouse, the law treats all such property as being jointly owned and used for the benefit of both spouses, regardless of who actually paid for it. As part of the divorce, the court may consider these things as marital property and distribute them accordingly.

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## What About Bank Accounts?

If acquired during the marriage, no matter whose name is on the account, you are both owners of the funds. If one spouse

draws all of the money out of an account, he or she may have to account to the other for the money, no matter who originally put the funds into the account or if the account is titled in only one name. As part of the divorce, the court may consider the bank accounts as marital property and equitably divide the funds, regardless of whose names were on the accounts.

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## What If I Don’t Want A Divorce?

If the divorce is on no-fault grounds, the only defenses are showing that you have not lived separate and apart for two years or that the marriage is not irretrievably broken.

In a fault divorce, your spouse must be “innocent and injured” to establish grounds. If you are able to prove that this is not the case, you may be able to prevent the divorce. You can also attempt to prove that the facts claimed by your spouse are false. There are certain other defenses that may apply in specific situations. You should discuss with your attorney what courses of action might be available.

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## What Will Be In The Final Court Order?

When the court issues a Decree of Divorce, the order may include other matters if they were raised in the proceeding by either spouse. These include disposition of marital property and other property interests; child custody and visitation; child support, alimony; and enforcement of agreements voluntarily entered into by the parties.

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## Can The Court Require Counseling?

Yes. The court may require up to three counseling sessions with a qualified counselor within a three to four month period in the following cases:

- indignities are used as grounds for the divorce and counseling is requested by either person;
- either no-fault ground is used and counseling is requested by either person; and
- in certain cases where there are children of the marriage under 16 years old.

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## Who Pays The Attorney’s Fees?

The court has the power to award preliminary counsel fees to the dependent spouse. In addition, in the final order, after the property rights of the parties are determined, the court could direct the parties to pay their own costs and fees, or it may divide the costs and expenses equitably between the parties. Payment and recovery of costs and attorneys’ fees are matters to be discussed with your lawyer during the initial meeting.

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## What Is An Annulment?

An annulment may be sought for marriages that are by law invalid or which may be declared invalid by a court. Marriage is a contract, and if either individual was unable to enter the contract because of intoxication, being under age, or fraudulent inducements, the court may determine that no contract of marriage ever existed. If you think an annulment may be appropriate in your situation, discuss the matter with a lawyer.

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## How Can I Help My Children?

Keep children out of the conflict! The problems should be worked out between you, your spouse, and your attorneys, not through your children. Also, children often feel that they are the cause of the problems and must be reassured that this is not the case. These are very difficult times for you and your family. Do not be afraid to get help from family and friends or